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OFFICE OF PETITIONS

In re Application of
Holloway, et al.
Application No. 10/656,717
Filed: September 4, 2003
Attorney Docket No. 5853-461
For: METHOD OF PRODUCING
NANOSIZED OXIDE POWDERS

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: DECISION GRANTING
: PETITION
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This is a decision on the petition filed August 13, 2004, requesting in effect, withdrawal of the Notice of Incomplete Nonprovisional Application, mailed November 28, 2003, and accordation of a September 4, 2003 filing date to the above-identified application. The petition will be treated under 37 CFR 1.53(e).

The application was deposited on September 4, 2003. On November 28, 2003, the Office of Initial Patent Examination mailed a Notice informing petitioners that no filing date had been accorded to the application papers deposited on September 4, 2003 because no drawing was present, as is required by 35 USC 113, despite the fact that several drawings were referenced in the specification.

In response to the Notice, petitioner filed 10 sheets of drawings on December 15, 2003 (certificate of mailing date December 11, 2003).

The Office mailed a filing receipt on January 21, 2004 citing December 15, 2003 as the filing date for the application.

Petitioners filed the present petition on August 13, 2004, requesting that the application be accorded a filing date of September 4, 2003 and arguing that drawings are not necessary for the understanding of the subject matter sought to be patented.

It is noted that the above-identified application contains method claims. As stated in MPEP 601.01(f), it is the practice of the PTO to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 USC 113 (first sentence.)

MPEP 601.01(f) also states that:

A non provisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figures in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP 601.01(g), so long as the

This application contains method claims. Therefore, the above-identified application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP 601.01(g).

MPEP 601.01(g) states that if an application is filed without all of the drawing figures referred to in the specification, a "Notice of Omitted Items" is mailed indicating that the application has been accorded a filing date.

In view of the above, the "Notice" mailed November 28, 2003 and the second filing receipt were mailed in error and are hereby withdrawn. The petition is **granted**. No petition fee will be charged because the error that necessitated the instant petition was committed by the Office.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of **September 4, 2003**. The drawings filed on December 15, 2003 (certificate of mailing date December 11, 2003) were not filed on September 4, 2003, and as such, are not considered part of the original application papers.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 308-6712.



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for Patent Examination Policy